

To: Kay Morrison  
Community Involvement Coordinator  
U.S. Environmental Protection Agency  
Region 10 Seattle, Washington

From: Duwamish River Accountability Group (DRAG)

Re: (JAN 2021) ESD EXPLANATION OF SIGNIFICANT DIFFERENCES  
COMMENT LETTER FOR LOWER DUWAMISH WATERWAY SUPERFUND SITE.

Dear Kay Morrison and EPA Community Involvement Staff for Region 10,

Thank you for allowing the public to provide comment. We are The Duwamish River Accountability Group (DRAG), which is a group of community members and volunteers who have formed following the recent EPA Duwamish River cleanup proposed changes. Our mission is to address this, and other injustices occurring in the Duwamish Valley.

In December 2014, EPA released its Final Cleanup Plan (called a “Record of Decision” or ROD). The ROD dictates the timeline and level of cleanup required, including where and how much toxic sediment needs to be removed, capped, or treated with other alternatives. The EPA recommended the dredging remedy for the areas with the highest levels of toxic chemicals or where bottom river mud cannot be covered with a cap or natural river deposits.

The river communities are suffering environmental impacts from the area being industrialized and deserve the most thorough cleanup as possible. We encourage the cleanup to still include the cleanup of 177 acres and not take short-cuts to save 1 million dollars. The DRAG and the community urges EPA to remove sediments and have the river cleaned up according to the 2014 Record of Decision.

We offer feedback to the EPA that the proposed changes not be taken up, further time be granted for public comment, more transparency and community outreach is brought into the process, the Department of Ecology is allowed time to do its impact on water research, and that this project attain the oversight of its regional director and a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities on the premises of:

Environmental Justice: The regions most impacted by this superfund site are in Seattle's historically Black and Brown neighborhoods of South Park and Georgetown, areas that are also home to some of Seattle's most economically disenfranchised households. The current cleanup plan was already a compromise to said impacted communities-- to further withdraw clean-up with this amendment

goes directly against the EPA's commitment to Environmental Justice<sup>1</sup>, and Executive Order 12898: *Federal Action To Address Environmental Justice in Minority Populations and Low-Income Populations*<sup>2</sup>.

**Scientific Data & Research Processes:** The community and the University of Washington has pointed to concerns related to the scientific findings upon which the foundation for the amendment has been made, specifically related to toxicology levels and the failure to consider a weight of evidence analysis, as other studies came up with drastically different outcomes than the findings in the studies used by the EPA. Further, the community is concerned the wildlife specimens nor cumulative buildup of the presence of multiple compounds was taken into consideration.

**Impact on Water Quality:** The Department of Ecology has voiced concerns that the proposed changes do not allow for proper assessment of impact on water qualities, and those studies should be conducted prior to cleanup amendment.

**Time Frame, Representation, and Transparency:** The turnaround time from when the public received the fact sheet to the close of public comment was too short: the fact sheet went out just days before the end of public comment. Further, this proposed amendment has received significantly less time for public feedback as proposed amendments for other superfund sites resulting in significantly less participation from those most impacted. The public was not properly informed of the independent analysis of the proposed change-- the independent analysis report has still not been released to the public.

**Regulatory & Oversight Neglect:** The EPA does not yet have a new administrator in place for this region which would be necessary to provide the critical support regarding all the above mentioned issues at hand, potentially shielding itself from further complications with cleanup amendment made in haste given the consortium of complicating factors.

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<sup>1</sup> From the [United States Environmental Protection Agency Statement on Environmental Justice](#)

<sup>2</sup> [Executive Order 12898](#) of February 11, 1994: *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

## CONSIDERATION I: ENVIRONMENTAL JUSTICE & PROTECTIONS AGAINST INEQUITY

DRAG opposes the proposed amendment to clean less of the river on the issue of environmental justice. According to the EPA:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys:

- The same degree of protection from environmental and health hazards, and
- Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.<sup>3</sup>

Further, the EPA has named this region an environmental justice region in their Environmental Justice Analysis.<sup>4</sup> We argue that the amended cleanup plan that will account for 5 acres less of the contaminated Duwamish River to be cleaned is a matter of environmental justice based on the historically BIPOC and lower income population of this region, as well as the presence of the tribal community members.

### GEORGETOWN & SOUTHPARK: HISTORICALLY BLACK & BROWN COMMUNITIES

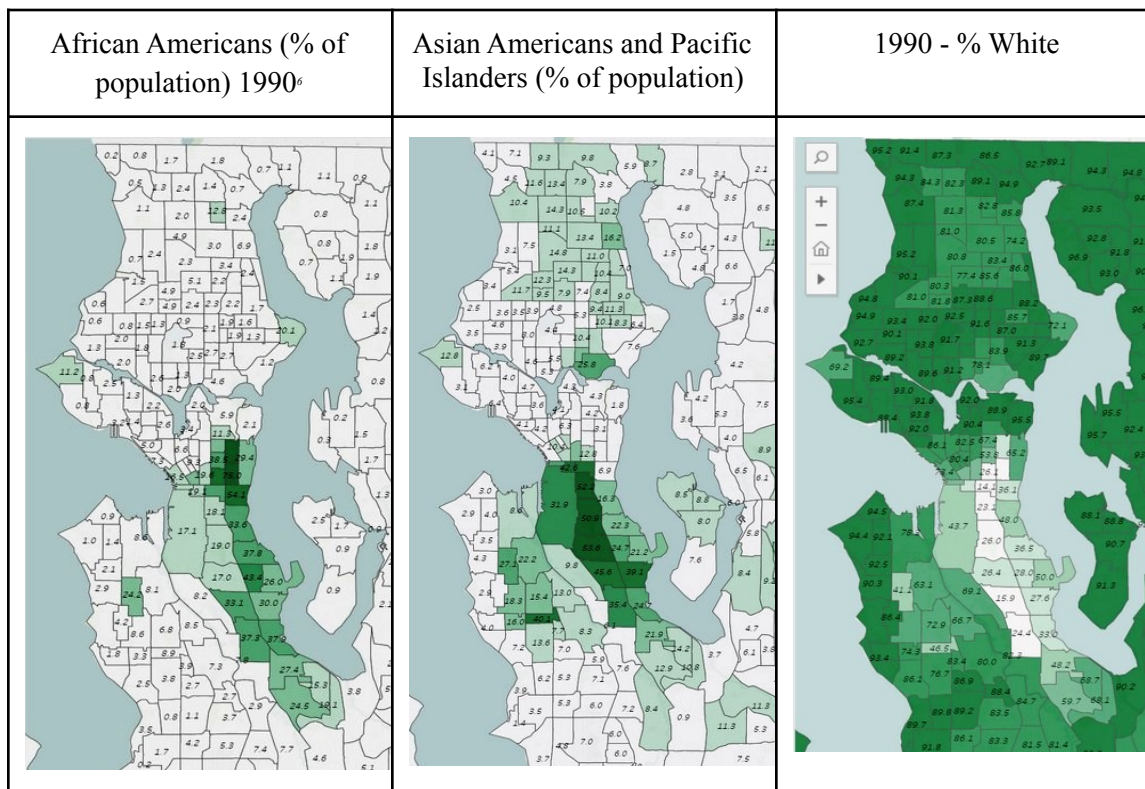
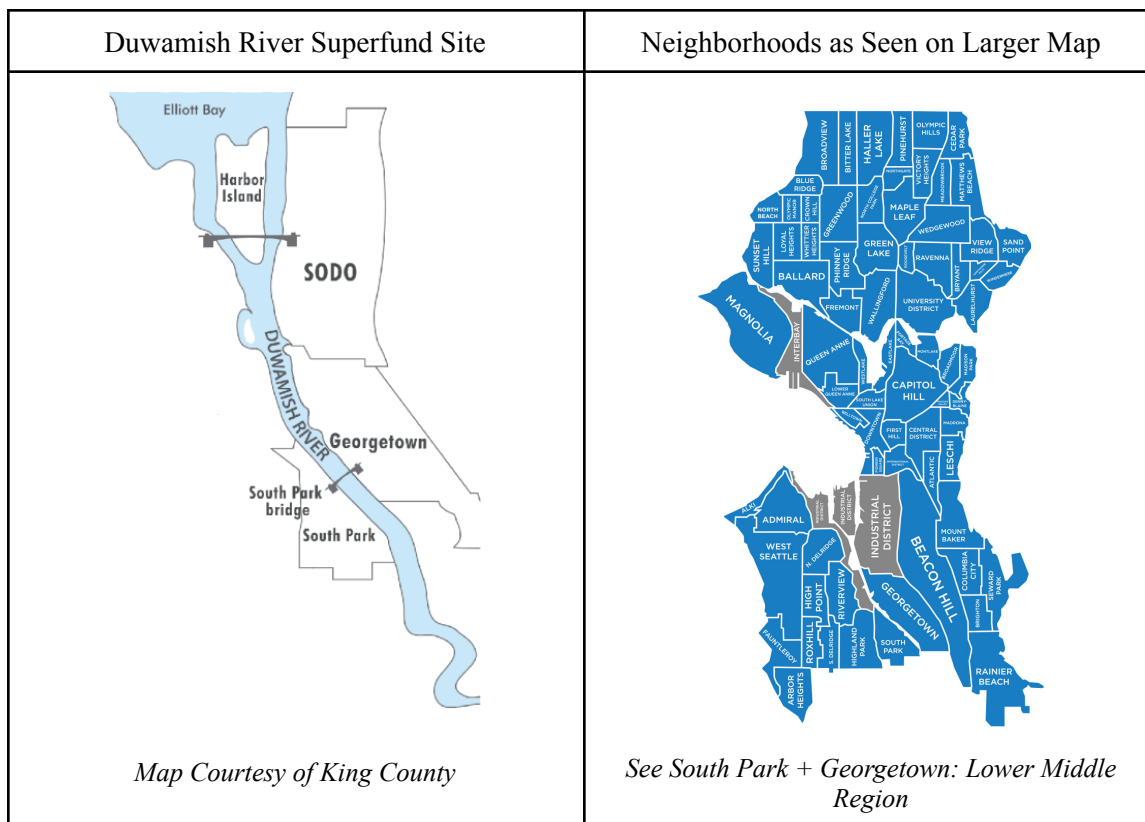
South Seattle in general, is home to a larger portion of Seattle's BIPOC community members due Seattle's racist history of redlining and segregation. This history is well documented by the Seattle Civil Rights and Labor History Project with the University of Washington's Study of Seattle Segregation Maps from 1920 - 2010.<sup>5</sup>

FIGURE 1A: ENVIRONMENTAL JUSTICE MAPS OF DUWAMISH SUPERFUND SITE

<sup>3</sup> See footnote 1.

<sup>4</sup> [EPA's Environmental Justice Analysis for the Lower Duwamish Waterway Cleanup](#)

<sup>5</sup> From the Seattle Civil Rights and Labor History Project with the University of Washington: [Segregated Seattle. Seattle Segregation Maps](#): By 1910: Residential patterns continued trends that had been established by 1990. Southeast Seattle was more multiracial than ever. This is where most Black families lived, sharing census tracts with Asian Americans, Latinos, and also Whites. In some tracts the split was close to 25%, 25%, 25%, 25%. The small Native American population also distributed through these neighborhoods. Southern King County had much the same multiracial complexion. Meanwhile the eastside had continued its bi-racial trend, shared by Whites and Asian Americans, especially South Asians and Chinese, with Latinos moving into some neighborhoods but very few African Americans. Much of North Seattle, West Seattle, and the wealthy neighborhoods near water had seen much less change. Some tracts remained more than 90% White, many others above 80%, and in these areas Asian Americans were likely to be the only people of color.



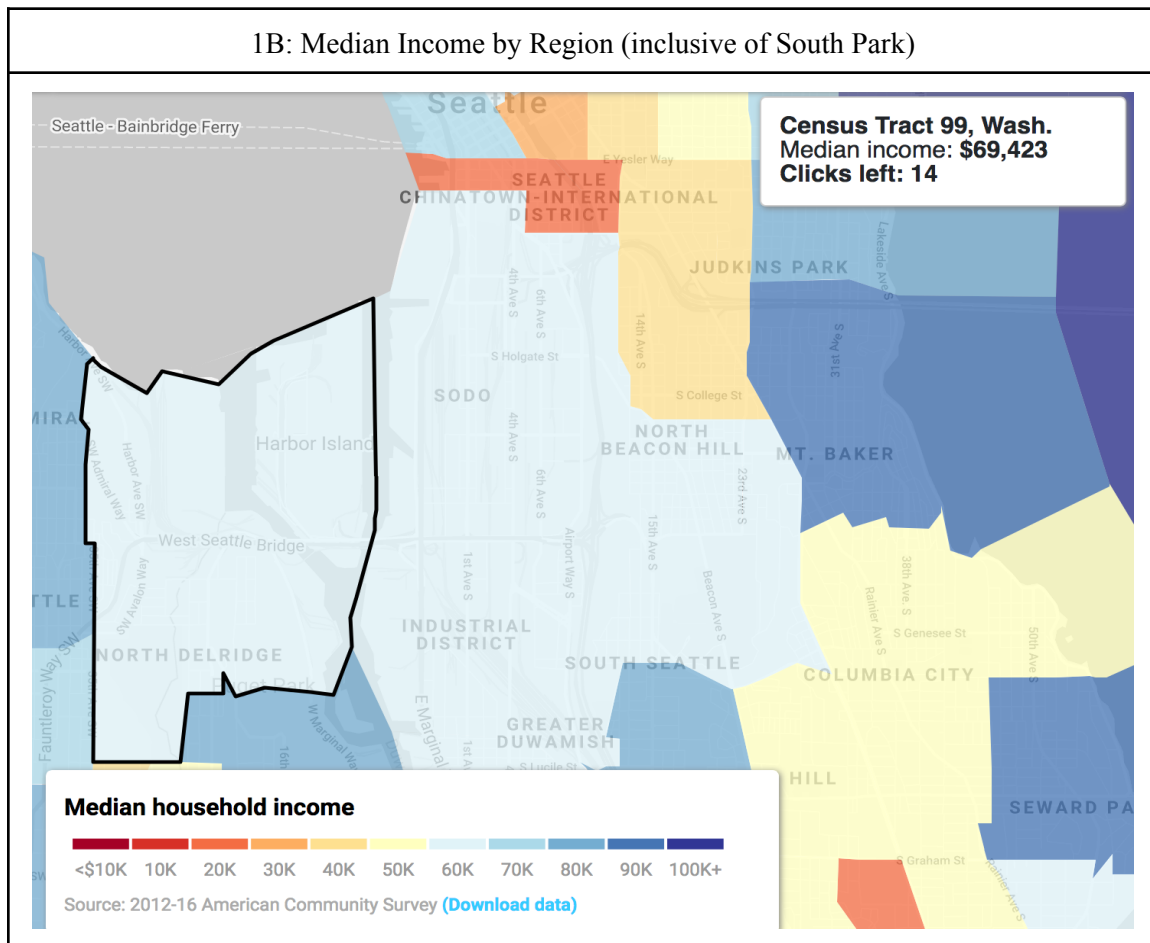
<sup>6</sup> Seattle Civil Rights & Labor History Project & UW: [Segregated Seattle. Seattle Segregation Maps](#): footnote 5

A comparison of the superfund site maps in image 1A, that demonstrate the distribution of Seattle residents along the lines of racialized makeup, the superfund site has been a more heavily populated area for Seattle's African American and Asian American populations with a noted absence of white Seattle residents that have historically lived within the impacted zone.

## GEORGETOWN & SOUTHPARK: LOWER INCOME HOUSEHOLDS

Further special considerations must be given to the care for this region's population by factoring in the economic makeup of this region's population, as can be seen in graphic 1B and 1C inclusive of South Park and Georgetown, respectively.

FIGURE 1B & 1C: MEDIAN HOUSEHOLD INCOME BY REGION<sup>7</sup>



<sup>7</sup> Per U.S. Census Bureau American Community Survey Data for 2012-2016 as pulled by visualization from [Rich Blocks Poor Blocks](#)

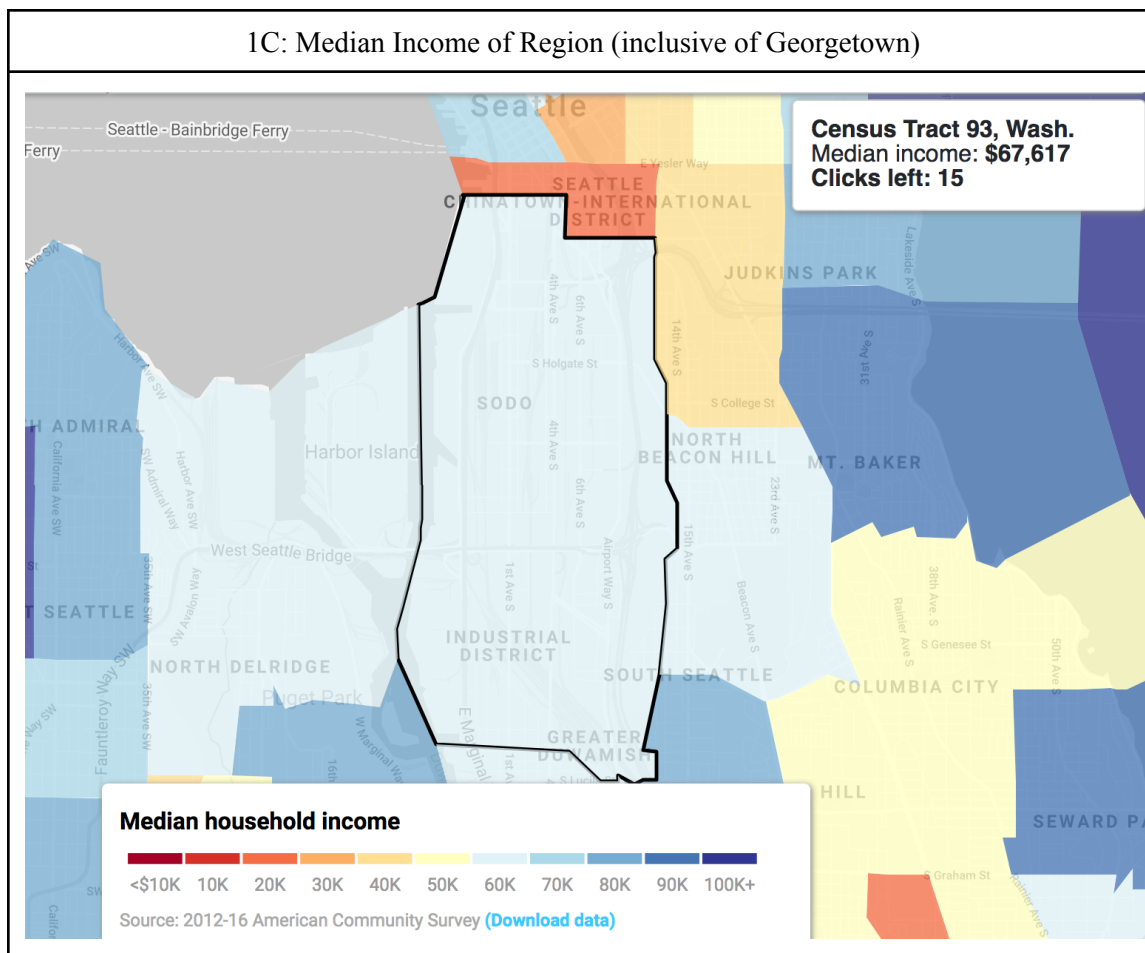
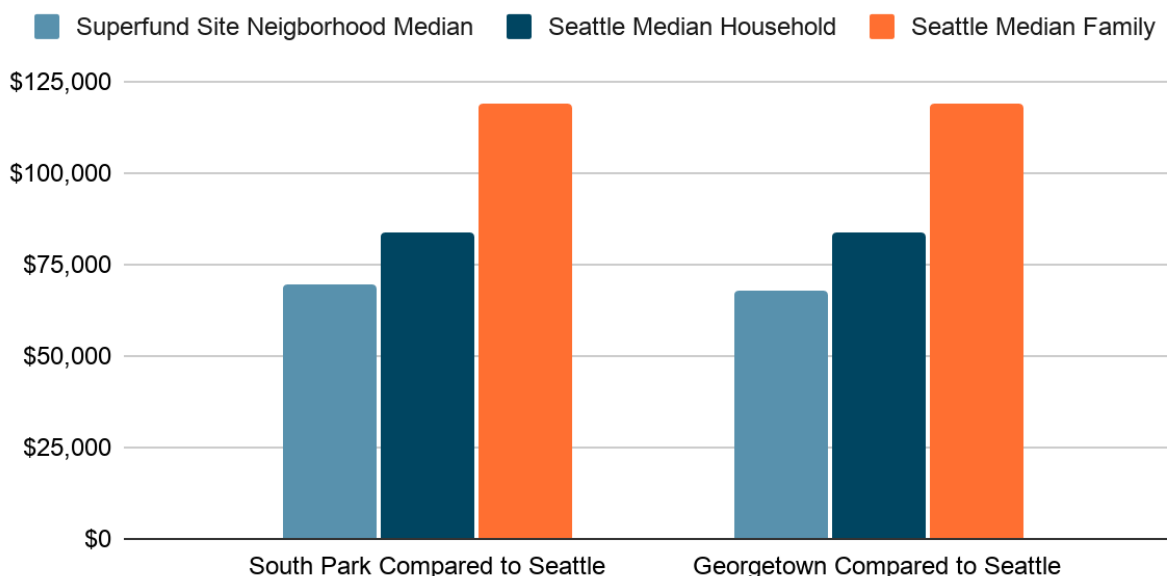


FIGURE 1D: ECONOMIC COMPARISON OF IMPACTED REGION HOUSEHOLDS<sup>8</sup>

Census Tract 99 (inclusive of South Park) 2016 Median Household Income	\$69,423
Census Tract 93 (inclusive of Georgetown) 2016 Median Household Income	\$67,617
All of Seattle 2016 Median Household Income	\$83,476
All of Seattle as a whole 2016 Median Family Income	\$119,000

<sup>8</sup> [Seattle Office of Planning and Community Development](#) prosperity statistics from the 2016 American Community Survey (ACS).

## Superfund Site Median Incomes Compared to Seattle Median - 2016



As seen in figure 1D, South Park (census tract 99) and Georgetown (census tract 93) have median household incomes well below that of the overall median Seattle family income cited in the 2016 ACS estimate<sup>9</sup> of \$119,000 and overall Seattle household median income of \$83,476 demonstrating the economic disparities faced by those who live in this region.

### GEORGETOWN & SOUTHPARK: TRIBAL PRESENCE

The EPA's Environmental Justice Analysis for the Lower Duwamish Waterway Cleanup<sup>10</sup> states:

The federally-recognized Muckleshoot and Suquamish tribes have fishing rights within or just north of the Lower Duwamish Waterway. The treaty rights for tribes along the Duwamish were established in the Treaty of Point Elliott. The fishery catch allowed by tribal treaty rights were further defined in the 1974 Boldt decision (U.S. v. Washington, 1974)<sup>8</sup>, which affirmed that 50% of the catch from an area identified as a tribal usual and accustomed fishing and harvesting area should go to tribes with rights for that area as defined in the Treaty of Point Elliott. Usual and accustomed areas for different Tribes often coincide in Washington, as is the case in the Duwamish

<sup>9</sup> [Seattle Office of Planning and Community Development](#) prosperity statistics from the 2016 American Community Survey (ACS).

<sup>10</sup> [EPA's Environmental Justice Analysis for the Lower Duwamish Waterway Cleanup](#)



Waterway. The LDW is primarily a treaty fishing area for the Muckleshoot tribe, which has an active salmon fishery, while the Suquamish tribe manages fisheries just north of the Lower Duwamish Waterway (North of Lower Duwamish Waterway – see Waterway extent in Figure 1). Resident seafood from the Lower Duwamish Waterway can be present in or pass through the Suquamish Tribe’s usual and accustomed harvesting and gathering area.

The Duwamish tribe (ancestors along with the Suquamish Tribe of Chief Si’ahl or Seattle) remains a presence in the region, with a newly-constructed Duwamish Longhouse located along the Duwamish River, and the use of Herring House Park for cultural ceremonies.

Past tribal seafood consumption surveys (which included surveys of the Tulalip and Suquamish Tribes) have found that seafood consumption rates for tribal members are much higher than EPA’s National Toxics Rule default rate of 6.5 g fish/day and EPA’s recommended water quality national default fish consumption rate of 17.5 g fish/day.

Overall, the region being named an Environmental Justice Region with the trifecta of community members who are largely BIPOC, low income, and/or part of the tribal communities who will be most impacted is reason alone to abandon the amendment for reduced cleaning. The federal law also backs this statement.

## EXECUTIVE ORDER 12898 - Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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### Title V

The Economic and racial makeup of the superfund site are of significance due to the EPA’S Commitment to Environmental Justice, and the 1994 *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* Executive Order.

The EPA’s Environmental Justice page states<sup>11</sup>:

In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin.

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<sup>11</sup> [EPA Environmental Justice: Title VI and Environmental Justice](#)



With that directive in mind, in August 2011 the Environmental Justice IWG established a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities.

## **TITLE VI**

1. Title VI prohibits recipients of federal financial assistance (*e.g.*, states, universities, local governments) from discriminating on the basis of race, color, or national origin in their programs or activities.
2. Title VI is a federal law that applies to federal financial assistance recipients (*i.e.*, persons or entities that receive EPA financial assistance) and not to EPA itself as the Executive Order does.
3. Title VI allows persons to file administrative complaints with the federal departments and agencies that provide financial assistance alleging discrimination based on race, color, or national origin by recipients of federal funds.
4. Under Title VI, EPA has a responsibility to ensure that its funds are not being used to subsidize discrimination based on race, color, or national origin. This prohibition against discrimination under Title VI has been a statutory mandate since 1964 and EPA has had Title VI regulations since 1973.
5. EPA's Office of Civil Rights is responsible for the Agency's administration of Title VI, including investigation of such complaints.

Further, the Executive Order named above states that all federal agency hold stated responsibility:

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories.<sup>12</sup>

This executive order is set to keep the federal agencies from taking actions that would specifically harm BIPOC and low income populations such as populations in the Lower Duwamish Superfund Site communities of South Park and Georgetown.

The amendment which would leave 5 acres of the Duwamish River to not be cleaned, leaving known carcinogens in the river, further exposing these Environmental Justice populations to

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<sup>12</sup> See footnote 2

those carcinogens is a violation of known environmental protections, and therefore must be abandoned.

Furthermore, these special populations are in fact being left out of the process. Although some efforts for outreach have been reported by DRCC, the actual presence of these community members was grossly lacking at the most recent March 31st roundtable, with about half the caucuses absent. As this is a population that is systematically marginalized, extra efforts needed to be taken to bring them into the process, and to seek public comment from these stakeholders-- those community members most impacted. To follow through on the amendment without a massive campaign to attain community feedback would be a gross neglect by the EPA and its hired community outreach teams.

We ask that the amendment be dropped. However, in lieu of this, we demand that any further consideration of the amendment be overseen by a Title VI Committee to ensure the protection and rights of the impacted communities which have been deemed Environmental Justice communities.

## CONSIDERATION II: SCIENTIFIC DATA & RESEARCH PROCESS

The EPA's proposed amendment for the Lower Duwamish River Superfund Site cleanup is based on the supposition that a contaminant in the river, benzo[a]pyrene (BaP) no longer poses as high a health risks as it was previously thought to, based on a 2017 EPA update to their 1987 health risk information report for BaP.

There are, however, a number of concerns with this supposition: lack of weight of evidence, lack of research on synergistic health effects of multiple pollution sources, and a lack of information about increased risk factors/higher cancer slope factor in cases of childhood exposure.

### IIA: THE EPA FAILED TO PROVIDE WEIGHT OF EVIDENCE FOR DECREASED RISK OF BAP

According to the Duwamish River Cleanup Coalition (DRCC) Factsheet released to the public on March 30th, 2021 titled, "Understanding the EPA's Proposed Change to the Duwamish Superfund Site Cleanup Plan, or 'ESD' (Explanation of Significant Differences)" there is concern by independent scientists regarding the EPA's findings on BaP. The independent scientists cite a lack of weight of evidence, and although the independent scientists' findings have not been made public directly, they are paraphrased here:

In order to review the cancer risk of exposure to BaP and other cPAHs, EPA looked at 15 research studies. They excluded 12 that did not test for lifetime exposure, and of the three that were left, they eliminated one more due to its use of less stringent protocols and reporting than the two newest studies. The two remaining studies indicated that BaP is 7-times less toxic than the previous standard used by EPA, while the excluded lifetime study indicated that BaP is about 1.5-times more toxic than previous standard (other studies also indicated a higher cancer risk than the new EPA standard). Although the selection of the two newest studies is consistent with EPA guidelines, UW scientists are concerned that inconsistent results across all studies means that there is still a high level of uncertainty about the cancer risk of BaP.<sup>13</sup>

Essentially, it seems the EPA used the only two studies available that indicate this lower carcinogenic risk for BaP. All other studies show that the health standard for BaP's should be at a lower environmental level. This lack of weight of evidence suggests that

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<sup>13</sup> ["Understanding the EPA's Proposed Change to the Duwamish Superfund Site Cleanup Plan, or 'ESD' \(Explanation of Significant Differences\)"](#) - posted to the Duwamish River Cleanup Coalition's social media on March 30th, 2021.

the lowered health standard was not scientifically indicated. We at Duwamish River Accountability Group would like to inquire why, without weight of evidence, was the health standard lowered, and press for a deeper reconsideration of the cleanup amendment given the compounding issue of questionable science, and the population at risk.

Furthermore, the independent scientist report stated that the EPA made the proposed change to the superfund site cleanup plan based on the assumption that the toxicity levels of the other cPAH's present in the river could be insinuated based on the BaP studies. The independent scientists with the DRCC stated this is not true. In that same DRCC factsheet, the independent scientists were summarized to say, "Health risk estimates for other cPAH's have long been based on the toxicity of BaP. However, more recent science indicates these assumptions may not be protective and researchers who specialize in cPAHs say each chemical needs to be studied individually."<sup>14</sup>

Based on these two uncertainties of the actual carcinogenic level of BaP and other cPAH's alone, the amendment should not move forward, and the EPA should maintain its cleanup commitments.

## IIB: LACK OF RESEARCH ON SYNERGISTIC HEALTH EFFECTS OF MULTIPLE POLLUTION SOURCES

In the March 31st Lower Duwamish Waterway Roundtable Meeting<sup>15</sup> a number of community members asked the independent scientists if the synergistic carcinogenic levels of BaP's had been measured with other cPAH's or other toxic compounds.

The answer to the community in that meeting was that DRCC did not have that data. The round table was not video recorded but those present at this open to the public meeting can attest to this conversation.

The Duwamish River Accountability Group would like to suggest that to clean less of the superfund site based on one data set that does not take into consideration an increased carcinogenic risk slope or cancer slope due to synergistic potential when multiple carcinogens are present is not only poor science, but possible malfeasance, as this could have life or death consequences on the community impacted.

Further, it is a known issue of concern that has been brought up by the community for over a decade, as documented in the Addington 2009 report which was cited in the Environmental Justice Analysis for the Lower Duwamish Waterway Superfund Cleanup, Appendix B. The report's purpose was to, "to ensure that communities are meaningfully involved in the decision process as much as is practicable"<sup>16</sup> as stipulated in EO12898.

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<sup>14</sup> See footnote 10.

<sup>15</sup> [Lower Duwamish Waterway Roundtable Meeting](#) held on March 31, 2021.

<sup>16</sup> [EPA EJ Analysis](#)

That report lists a community concern to be, “synergistic health effects of multiple pollution sources”. That was in 2009. The fact that in 2021 at the most recent round table, the community still asked this question, and still did not have answers to this question, over a decade later, implies a breach of EO12898 in involving the community meaningfully, and a failure of EJ by the EPA.

## IIC: LACK OF INFORMATION ABOUT INCREASED RISK FACTORS & CANCER SLOPE IN CASES OF CHILDHOOD EXPOSURE

The changes which only correspond to the new CPAH cleanup levels still put the most impacted in danger which are children who play on the beach,<sup>17</sup> clam gatherers, tribal fishers, and all who fish and eat from the Duwamish River.

DRAG calls to the attention of the EPA the fact that we do not know the impact of BaP exposure on early children. From the EPA’s own Toxicological Review of Benzo[a]pyrene Executive Summary:

According to the Supplemental Guidance for Assessing Susceptibility from Early Life Exposure to Carcinogens (U.S. EPA, 2005b), **individuals exposed during early life to carcinogens with a mutagenic mode of action are assumed to have an increased risk for cancer.** The oral slope factor of 1 per mg/kg-day and inhalation unit risk of 0.0006 per µg/m<sup>3</sup>, calculated from data applicable to adult exposures, do not reflect presumed early life susceptibility to this chemical. **Although some chemical-specific data exist for benzo[a]pyrene that demonstrate increased early life susceptibility to cancer, these data were not considered sufficient to develop separate risk estimates for childhood exposure.**

As the EPA knows that early childhood exposure does increase the risk of cancer to some extent, we feel it is critical to name here some of the other known risks that the EPA would be exposing the children to by leaving a portion of the river uncleaned per the proposal.

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<sup>17</sup> [PER THE EPA Toxicological Review of Benzo\[a\]pyrene Executive Summary](#): “Susceptible Populations and Lifestages Benzo[a]pyrene has been determined to be carcinogenic by a mutagenic mode of action in this assessment. According to the Supplemental Guidance for Assessing Susceptibility from Early Life Exposure to Carcinogens (U.S. EPA, 2005b), **individuals exposed during early life to carcinogens with a mutagenic mode of action are assumed to have an increased risk for cancer.** The oral slope factor of 1 per mg/kg-day and inhalation unit risk of 0.0006 per µg/m<sup>3</sup>, calculated from data applicable to adult exposures, do not reflect presumed early life susceptibility to this chemical. Although some chemical-specific data exist for benzo[a]pyrene that demonstrate increased early life susceptibility to cancer, these data were not considered sufficient to develop separate risk estimates for childhood exposure. In the absence of adequate chemical-specific data to evaluate differences in Toxicological Review of Benzo[a]pyrene<sup>8</sup> age-specific susceptibility, the Supplemental Guidance (U.S. EPA, 2005b) recommends that age-dependent adjustment factors (ADAFs) be applied in estimating cancer risk. The ADAFs are 10- and 3-fold adjustments that are combined with age specific exposure estimates when estimating cancer risks from early life (<16 years of age) exposures to benzo[a]pyrene.”

According to the EPA Benzo[a]pyrene (BaP) Toxicity Report<sup>18</sup> BaP is known to impact developmental toxicity (including developmental neurotoxicity), reproductive toxicity, and immunotoxicity. Specifically:

**Development:**

- Neurobehavioral changes
- Decreased embryo/fetal survival

**Reproduction:**

- Decreased ovarian follicles and ovary weight
- Reduced ovulation rate and ovary weight

And leads to gastrointestinal tumors and respiratory tumors.<sup>19</sup> Further impacts on health can be seen in the EPA's Quantitative Estimate of Carcinogenic Risk from Oral Exposure Report.<sup>20</sup> Of special consideration should be the oral slope factor, which is reported to be 1 per mg/kg-day in adults.

**Oral Slope Factor:**

1 per mg/kg-day

**Extrapolation Method:**

Time-to-tumor dose-response model with linear extrapolation from the POD (BMDL<sub>10</sub>(HED)) associated with 10% extra cancer risk.

**Tumor site(s):** Gastrointestinal

**Tumor type(s):** forestomach, esophagus, tongue, and larynx tumors (Kroese et al. 2001; Beland and Culp, 1998)

**Note:** ADAF -- EPA has concluded that benzo[a]pyrene is carcinogenic by a mutagenic mode of action. Application of age-dependent adjustment factors (ADAFs) to the oral slope factor is recommended in combination with appropriate exposure data when

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<sup>18</sup> [Per the EPA Toxicological Review of Benzo\[a\]pyrene Executive Summary](#)

<sup>19</sup> [Per the EPA Toxicological Review of Benzo\[a\]pyrene Executive Summary](#): "Evidence for Human Carcinogenicity Under EPA's Guidelines for Carcinogen Risk Assessment (U.S. EPA, 2005a), benzo[a]pyrene is "carcinogenic to humans" based on strong and consistent evidence in animals and humans. The evidence includes an extensive number of studies demonstrating carcinogenicity in multiple animal species exposed via all routes of administration and increased cancer risks, particularly in the lung and skin, in humans exposed to different PAH mixtures containing benzo[a]pyrene. Mechanistic studies provide strong supporting evidence that links the metabolism of benzo[a]pyrene to DNA-reactive agents with key mutational events in genes that can lead to tumor development. These events include formation of specific DNA adducts and characteristic mutations in oncogenes and tumor suppressor genes that have been observed in humans exposed to PAH mixtures. This combination of human, animal, and mechanistic evidence provides the basis for characterizing benzo[a]pyrene as 'carcinogenic to humans.'"

<sup>20</sup> See footnote 11

assessing risk associated with early-life exposure.

These are the known health issues that arise in adults with the presence of BaP as claimed by the EPA toxicology report. Repeatedly the report indicates increased risk with early exposure, and yet, the EPA also states that we do not know the rate of increased risk due to early childhood exposure. Thus, the EPA's amendment is not only scientifically unfounded, but all signs point to it also being quite unsafe. To go ahead with the amendment would be wholly irresponsible, and could easily be considered an attack on the people of the Environmental Justice neighborhoods of South Park and Georgetown, and the tribal community members who live on and off of the Lower Duwamish River and are most impacted.

This, along with the lack of weight of evidence, UW toxicologist concerns regarding the methods by which other CPAH toxicity levels are being evaluated, and the failure to evaluate synergistic factors of multiple toxins all provide ample grounds for the amendment to be abandoned. The cost of \$1 million saved is not worth the countless lives endangered by keeping these higher levels of BaP in the river.

Overall, DRAG and other River community members are concerned that BaP were an independently measured toxin and the cumulative effects and **combinations of toxins were not analyzed** putting River community members, recreational users and all who fish from the Duwamish River at risk. Further, the BaP is still known to contribute to cancer, and this risk is likely only compounded by 40+ other pollutants (that come with other health impacts) in and around the Duwamish River.



CONSIDERATION III:  
UNKNOWN IMPACT ON WATER QUALITY &  
POSSIBLE BREACH OF STATE LAW

The UW toxicologists who completed the independent scientific assessment of the impact of the EPA amendment had concerns about the water quality. In the informational one-sheet posted by DRCC on March 30th, 2021, they noted that the Department of Ecology has a higher health standard for BaP toxicity:

While the EPA is responsible for the cleanup of the sediments in the Duwamish, the WA State Department of Ecology (Ecology) is responsible for controlling on going sources of pollution in the areas that drain to the river. Controlling pollution involves finding sources of any ongoing contamination and taking action to stop or reduce them before they reach and pollute the river. Most of the remaining cleanup of the sediments cannot begin until sources of cPAHs and other contaminants (PCBs, arsenic, and dioxins/frans) are sufficiently controlled so that the river does not become recontaminated and cleanup does not have to be repeated.

Ecology does not expect the new BaP health risk information and the EPA's proposed change to affect its pollution source control efforts for the Duwamish. Ecology's regulation of water discharges will continue to comply with State Water Quality Standards which have NOT changed and continue to use the more conservative BaP toxicity value, in accordance with state law. No new rule-making to change this standard is currently being planned.

The only remaining question is whether the EPA's new sediment cleanup level affects how much cPAH in the sediments dissolve into water and changes water quality, which depends on a wide range of factors. The next phase of Ecology's Green-Duwamish "Pollutant Loading Assessment" involves building a model that will simulate the potential effects of contaminants in sediment on water quality.<sup>21</sup>

The takeaway from this analysis is threefold:

1. We do not know how the cPAH sediments may affect water quality; the Department of Ecology still needs to develop the test to determine this.

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<sup>21</sup> See footnote 12

2. The Department of Ecology and the State of Washington have their own, more conservative toxicity value for BaP's.

Even a cursory review of EPA's residual risk tables in the final Feasibility Study, we question if the cPAH sediment cleanup level would not be met in almost every segment of the river and wonder how these studies apply to fresh water and salt water moving currents where sediments are moved around and could pollute other bodies of water.

After speaking with community members, they had questions whether the water quality criteria and the risk assessment of toxins in the sediment impacted their health. We request the IRIS study meet the EPA's Baseline Human Health Risk Assessment (BHHRA) and we request there be a thorough study on clams actually consumed and gathered by impacted communities.

In sum, the water could very well be impacted, and the levels may very well be above what is permissible by Washington State Law. We implore the EPA to consider this matter when determining if the \$1 million is worth a possible battle with the State of Washington and the Department of Ecology to ensure that river is cleaned to the level that is safe by acceptable standards.

We ask the EPA to abandon its amendment. In lieu of this, we ask the EPA to extend its timetable for the amendment to be approved until after the Department of Ecology studies have been completed, and the impact on water quality is known.

## CONSIDERATION IV:

### REPRESENTATION, TIME FRAME & TRANSPARENCY

The EPA purports a commitment to meaningful involvement in the superfund cleanup outreach, as required by a provision of EO12898, “to ensure that communities are meaningfully involved in the decision process as much as is practicable.”<sup>22</sup>

The March 31st community roundtable made a couple things very clear on the matter of community involvement:

1. The community outreach efforts were ineffective inhibiting community representation in the process:
  - a. Multiple caucuses did not have representation at the Community Roundtable including an official representative from the “not-responsible” small businesses caucus, the tribal government caucus, and the recreational user caucus, just to name a few absent critical stakeholders.
  - b. Outreach efforts to community for the Round Table did not include door-to-door mailers or door knocking, but appeared to rely heavily on internet access and social media, which is likely not the best approach given the population who lives in this region, disproportionately marginalized and lower income for whom internet access is not as readily available or perhaps utilized.
2. The time frame from when DRCC put out a colloquially digestible fact sheet to when the public comment period closes (6 days) disallowed opportunity for public engagement and comment.
  - a. The DRCC factsheet, “Understanding EPA’s Proposed Change to the Duwamish Superfund Site Cleanup Plan, or ESD (Explanation of Significant Differences)” was published to DRCC’s facebook page on March 30th. It was not published to their website or other social media accounts. The end of the public comment period, April 5th, allowed for just 6 days for the information to be disseminated to the public, and comments to be made. This is an impossible feat and absolutely unacceptable burden on the Environmental Justice Communities of South Park, Georgetown, and impacted Tribal community members.

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<sup>22</sup> See footnote 9, page 63.

- b. The DRCC factsheet was not made physically available in the community until Saturday, April 3rd-- just three days before the public comment period was set to close.
  - c. Despite a formal request by DRAG to extend the public comment period, the EPA refused, stating an extension had already been made, failing to consider the fact that the DRCC's independent scientific analysis report had not been disseminated to the community by that time.
3. Transparency:
- a. At the time of this letter's submission, April 5th, DRCC still had not shared the UW toxicologists independent assessment report to the public.
  - b. At the time of this letter's submission, April 5th, DRCC still had not shared the UW toxicologists independent assessment fact sheet to their website.
  - c. There appears to be some hindrance of transparency and community oversight regarding the work of DRCC. What outreach was done and who did they successfully connect with? If the EPA is mandated to include community in process by executive order, the tools should be provided to DRCC to ensure that said outreach is localized, effective, and tailored to fit the population that is most impacted by the superfund site.
  - d. The Community Round Table was intentionally unfilmed; those critical conversations could not be made available to the public. When asked if the Round Table would be filmed at the beginning of it on March 31st, the Round Table moderator stated that the EPA attorneys advised against it, so the answer was no. This kind of barrier to inclusivity of all community members, whether they can make it to the event or not is unacceptable and an obstacle to having transparency in the process.

Due to the above issues of lack of representation in the process, prohibitively short time frame for community involvement post-release of relevant information-- information the public still does not fully have access to (the independent scientist UW toxicology report), and the lack of transparency in this process, we demand the amendment be halted until these ethical concerns can be properly addressed, line-by-line. In lieu of this, we demand a further extension of the deadline for public comment so that the independent UW report information can be released, disseminated, and commented upon by those most impacted. Aforementioned, we would again request a Title VI Committee review of these concerns, given the Environmental Justice Population being impacted.

## CONSIDERATION V:

### REGULATORY & OVERSIGHT NEGLECT

News Release from EPA Headquarters, March 31, 2021: “Administrator Regan Directs EPA to Reset Critical Science-Focused Federal Advisory Committees”<sup>23</sup>

The Washington Post, March 31st, 2021: “And in a memo to staff last week, [EPA Administrator Regan] said the agency is reviewing policies that impeded science and is encouraging career employees to ‘bring any items of concern’ to the attention of scientific integrity officials as they review Trump-era actions.”<sup>24</sup>

The EPA just attained its new EPA Administrator at the federal level. Region 10 still does not have a regional administrator. Given the number of concerns outlined above in considerations I-IV, the Duwamish River Accountability Group, made up of community members and volunteers must insist that this amendment process be halted until the new administration’s administrator for Region 10 can be appointed and onboarded for proper oversight of this project. There are so many factors that could bring harm to the impacted Lower Duwamish River Community, that we implore the EPA to abandon the amendment, or pause its progress until proper oversight can be attained.

Thank you,

Duwamish River Accountability Group

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<sup>23</sup> US EPA News Release from Headquarters, “[Administrator Regan Directs EPA to Reset Critical Science-Focused Federal Advisory Committees](#)” March 31, 2021

<sup>24</sup> Washington Post, “[EPA Dismisses Dozens of Key Science Advisors Picked Under Trump](#)” March 31, 2021